

Taxpayers' Year 1 and Year 2 tax returns, Taxpayers deducted these amounts as qualified residence interest under § 163(h)(3), in reasonable reliance on the advice of Representative, a qualified tax professional.

Taxpayers now wish to elect to treat amounts Y and Z as interest paid on indebtedness not secured by a qualified residence under § 1.163-10T(o)(5) of the Income Tax Regulations. If Taxpayers' extension to make the election is granted, the election is a regulatory election under § 301.9100-1(b) of the Procedure and Administration Regulations.

APPLICABLE LAW AND ANALYSIS

Section 163(h)(1) provides that, in the case of a taxpayer other than a corporation, no deduction is allowed for personal interest paid or accrued during the taxable year. Section 163(h)(2)(D) excludes qualified residence interest from the definition of personal interest. Section 163(h)(3)(A) defines qualified residence interest as interest paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

Section 1.163-10T(p)(3) of the Income Tax Regulations provides that a qualified residence includes a second residence. Section 1.163-10T(o)(5) provides that a taxpayer may elect to treat any debt that is secured by a qualified residence as not secured by the qualified residence. An election made under § 1.163-10T(o)(5) is effective for the taxable year for which the election is made and for all subsequent taxable years unless revoked with the consent of the Commissioner.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered under § 301.9100-2) will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

(i) seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;

(ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Under § 301.9100-3(c)(1)(i), the interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

According to Taxpayers' representations and the information supplied, Taxpayers acted reasonably and in good faith because they reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. In addition, the interests of the government are not prejudiced in this case. Taxpayers have represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayers would have had if the election had been timely made. Furthermore, the taxable year in which the regulatory election should have been made, and any taxable years that would have been affected had it been timely made, are not closed by the period of limitations on assessment.

CONCLUSION

Taxpayers' election is a regulatory election, as defined under § 301.9100-1(b). In the present situation, the requirements of §§ 301.9100-1 and 301-9100-3 have been satisfied. Taxpayers acted reasonably and in good faith. Furthermore, granting an extension will not prejudice the interests of the Government.

Accordingly, Taxpayers are granted an extension of time for making the election until 60 days following the date of this ruling. The election should be made by filing amended returns for Year 1 and Year 2 and by including a copy of this ruling with the amended returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied concerning the deductibility of the claimed interest under either § 162 or § 163(d)(3).

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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